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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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THE PEOPLE,

Plaintiff and Respondent,

v.

RASIKENDRA PRASAD,

Defendant and Appellant.

C041800

(Sup.Ct.No. 99F09392)

Rasikendra Prasad (defendant) appeals after a jury convicted him of three counts of welfare fraud (Welf. & Inst. Code, § 19800, subd. (c)(2)) and three counts of misappropriation of public funds (Pen. Code, § 424) based upon his approval of three fraudulent welfare applications. On appeal, defendant contends the evidence was insufficient and the court erred in calculating restitution. Since these contentions lack merit, we shall affirm the judgment.

## FACTUAL AND PROCEDURAL BACKGROUND

Defendant was employed as a welfare eligibility intake worker for the Sacramento County Department of Human Assistance (Department). In 1995 and 1996, defendant was employed at the Department's Madison office which served nearby areas. During his employment with the Department, defendant moonlighted as tax preparer for Rishi's Investment Service, which he owned.

An intake worker is required to verify the circumstances supporting a request for financial aid before approving a grant. If an intake worker suspects that an application for child support benefits based on one of the parents being absent from the home is false (in that the absent parent actually resides with the applicant), the worker should refer the case to the Department's early fraud detection program (EFDP) to verify the facts. Once an intake worker approves an application for aid, the case is transferred to a continuing eligibility worker. Pursuant to departmental policy, the cases of those applicants who lived outside the area served by the Madison office were transferred promptly to a Department office closer to the applicant's residence.

Defendant was charged by information with seven counts of welfare fraud (Welf. & Inst. Code, § 10980, subd.(c)(2) - counts one, three, five, seven, nine, eleven, & thirteen) in connection with six welfare applicants, and seven counts of misappropriation of public funds (Pen. Code, § 424 - Counts two, four, six, eight, ten, twelve, & fourteen), relating to those same six applicants.

A jury convicted defendant of three counts of welfare fraud and three counts of misappropriation of public funds in connection with three of the applicants: Rajeshni Lata, Azra Aslam, and Sobhini Sharma.

Lata

In 1993, defendant had approved welfare benefits for Rajeshni Lata because her unborn child's father, Vimal Prakash, was absent. Defendant had subsequently prepared Prakash's tax returns for tax years 1994-1996, and he knew that he resided outside the area serviced by the Madison office.

In May 1996, Prakash's cousin, Vinod Sharma, informed Lata that he was still friends with defendant and that he could arrange for her to receive new welfare benefits. Sharma drove Lata to the Madison office, where Lata submitted a note (which had already been prepared by someone else) asking for a worker familiar with Hindi. After being directed to defendant, Lata presented defendant with an application which, like the note, had already been filled out by someone else. As with Lata's prior application, the current application stated Prakash was an absent father. Sharma and defendant discussed listing a different address for Lata to receive her checks since she still lived with Prakash (who lived outside the area covered by the Madison office), and they ultimately decided to complete a form indicating Lata was renting an apartment from Sharma. In order to accomplish this, defendant wrote a factual statement, which he handed to Lata, who then copied it into an affidavit. Defendant told Lata to copy his words because "[t]hat's the only

way I could get the checks."

Lata received \$12,003 in cash assistance and \$5,496 in food stamps from May 1996 through February 1998. Telephone records showed that defendant made five calls from his county office to Lata's home phone number between June 1995 and May 1997, including one call on May 22, 1996 - six days after Lata had visited his office.

Aslam

Defendant knew Mohaamad Aslam and had prepared the joint tax returns of Mohaamad and his wife, Azra, for the tax years 1994 and 1995. On June 15, 1995, Azra met defendant at the Madison office and presented him with an application for benefits that someone else had completed before she went to his office. The application falsely stated that Mohaamad Aslam had moved to Pakistan and had last been employed in Sacramento as an ice cream truck driver. Azra's residence address also was false, as were the values placed on Azra's vehicles and the amount of her savings. The true facts were that Mohaamad continued to reside with Azra in their marital home and that he still worked at Campbell Soup, where he was a longtime employee.

Notwithstanding these errors, defendant approved welfare benefits for Azra Aslam the following day. Azra Aslam received \$10,712 in cash aid and \$4,605 in food stamps from June 1995 through May 1996. Telephone records also disclosed defendant had called the Aslam's residence from his county office five times between April 1995 and May 1996, including one on June 20, 1995 - four days after Aslam's application was approved.

Sharma

In early August 1996, Sobhini Sharma and her husband, Sanjay Sharma, visited defendant at the Madison office. Defendant knew the Sharmas socially and had prepared their 1995 income tax return several months earlier. Prior to their visit, defendant and Sanjay Sharma had discussed obtaining welfare benefits for Sobhini. Defendant assisted in the preparation of the welfare application, which stated that Sanjay was an absent parent with an unknown address and employment. The application also contained false information concerning Sobhini's residence. At the time Sobhini submitted her application, her husband was living with her and earning \$34,000 annually as an employee with United Airlines.

Sobhini Sharma received cash aid benefits totaling \$8,801 and food stamps totaling \$3,826 through October 1997. Telephone records showed defendant called the Sharmas' residence from his county telephone five times between July 1996 and June 1997, including one call on August 2, 1996 - the date listed on some of the application forms.

Thereafter, the court suspended imposition of judgment and placed defendant on probation for five years, on condition that he serve one year in jail, pay restitution of \$45,443 to Sacramento County, less any repayments made by the aid recipients.

DISCUSSION

Sufficiency of the Evidence

Defendant contends his convictions are unsupported by

substantial evidence because there was no testimony that he instructed the applicants to submit false information or that he otherwise knew the information they provided to him was false. We review this argument pursuant to settled standards.

“‘To determine sufficiency of the evidence, we must inquire whether a rational trier of fact could find defendant guilty beyond a reasonable doubt. In this process we must view the evidence in the light most favorable to the judgment and presume in favor of the judgment the existence of every fact the trier of fact could reasonably deduce from the evidence. To be sufficient, evidence of each of the essential elements of the crime must be substantial and we must resolve the question of sufficiency in light of the record as a whole.’” (*People v. Carpenter* (1997) 15 Cal.4th 312, 387, quoting *People v. Johnson* (1993) 6 Cal.4th 1, 38; see *Jackson v. Virginia* (1979) 443 U.S. 307, 317-320 [61 L.Ed.2d 560, 572-574].)

#### Welfare Fraud

The crime of welfare fraud (Welf. & Inst. Code, § 10980, subd. (c)) consists of three elements: “(1) a false statement or representation, impersonation or other fraudulent device; (2) which statement, representation, impersonation or other device results in the obtaining or retention of aid under division 9 of the Welfare and Institutions Code; and (3) which aid was obtained for or retained by one not in fact entitled thereto.” (*People v. Ochoa* (1991) 231 Cal.App.3d 1413, 1420; *People v. Camillo* (1988) 198 Cal.App.3d 981, 989, fn. 3

[scienter required].)<sup>1</sup> The crime does not require that the crime be committed by the person who applies for and receives the aid; a defendant may be convicted as an aider and abettor. (*People v. Crow* (1993) 6 Cal.4th 952, 963; *People v. Woods* (1986) 177 Cal.App.3d 327, 330; *People v. Lockett* (1972) 25 Cal.App.3d 433, 438.)

#### Lata

In the case of Rajeshni Lata, defendant had prepared the tax returns of the allegedly absent father, Prakash, and thus knew his true address as well as that Lata lived with him. During his meeting with Lata, defendant and Sharma decided that Lata would claim he was living with Sharma, and defendant wrote a statement to that effect, which Lata copied into her affidavit. She did so because defendant informed her it was the only way she could "get the checks." Although Lata did not state that defendant had prepared her application and the note requesting a worker familiar with Hindi, a jury could reasonably infer that both papers -- which were given to Lata in completed form before her meeting -- had been prepared under defendant's direction. Defendant had telephoned Lata's residence before she

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<sup>1</sup> At the time defendant was charged in July 2001, Welfare and Institutions Code section 10980, subdivision (c), provided in part: "Whenever any person has, by means of false statement or representation or by impersonation or other fraudulent device, obtained or retained aid under the provisions of this division for himself or herself or for a child not in fact entitled thereto, the person obtaining such aid shall be punished . . . ." (Stats. 1985, ch. 568, § 1, pp. 2072-2073.)

applied for benefits, from which a jury could infer (in light of the events at the actual meeting) that Lata's application had been discussed prior to the meeting. The phone call after the meeting and approval of benefits -- when the case should already have been assigned to a different employee -- gave rise to the reasonable inference that defendant was calling to inform Lata that their scheme had succeeded.

Aslam

The evidence discloses that defendant aided and abetted Azra Aslam in her commission of welfare fraud. Defendant had prepared Azra and Mohaamad Azlam's tax returns for the preceding two years, and the circumstances gave rise to the inference that defendant had completed Azra Aslam's welfare application *before* she went to his office, including the false statements about Mohaamad Aslam's whereabouts and his employer, as well as Azra Aslam's assets and residence. Defendant should have referred the case to fraud investigators, but instead approved the aid and telephoned Aslam several days later after the case had been assigned to another worker.

Sharma

In the counts pertaining to Sobhini Sharma, the evidence disclosed that both Sobhini and her allegedly absent husband, Sanjay, were present at defendant's office during preparation of Sobhini's welfare application. Even though defendant had filled out Sanjay's tax returns earlier that year, which presumably indicated the husband's employment, he listed the employer as unknown. Defendant had discussed obtaining benefits for Sobhini



Sharma several months earlier, and he included a false address in the application he helped prepare (and later approved). From these facts a jury could reasonably infer that defendant was a knowing participant in a scheme to defraud the County on behalf of the Sharmas.

Misappropriation Of Public Funds

Pursuant to Penal Code section 424, it is a felony for any state or local government official responsible for disbursing public funds to appropriate those funds for his own use or the use of another person, without authority of law. (Former Pen. Code, § 424, subd. 1.)<sup>2</sup> County aid eligibility workers such as defendant are subject to the provisions of the statute. (*People v. Evans* (1980) 112 Cal.App.3d 607, 615-616.)

There was evidence an intake worker is responsible for determining the eligibility of applicants; defendant had the authority to assign cases that he processed to continuing eligibility workers without his supervisor's review; defendant had no legal authority to disburse the welfare benefits; and Rajeshni Lata, Azra Aslam and Sobhini Sharma would not have been

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<sup>2</sup> At the time defendant was charged, Penal Code section 424, subdivision 1., provided in part: "Each officer of this state, or of any county, city, town, or district of this state, and every other person charged with the receipt, safekeeping, transfer, or disbursement of public moneys, who . . . [¶] 1. Without authority of law, appropriates the same, or any portion thereof, to his own use, or to the use of another, . . . [¶] . . . [¶] Is punishable by imprisonment in the state prison for two, three or four years." (Stats. 1976, ch. 1139, § 197, p. 5118.)

eligible for aid based on an "absent parent" hardship if the father of their children was living with them at the time they applied. From this evidence, the jury could infer that defendant violated eligibility requirements when he approved aid for those three applicants knowing that the fathers of their children were actually living with them. Thus, the jury reasonably concluded defendant was acting without lawful authority approved welfare benefits in those cases.

Defendant proposes his convictions should be reversed because the jury acquitted him of the same charges as to other welfare recipients whose cases involved "essentially the same set of facts" as those supporting the convictions. Defendant's argument rests on the mistaken premise that the facts were the same as to those counts for which he secured acquittals. The acquittals, however, concerned fraud by "sponsored applicants," while the convictions were based on "absent parent" eligibility.

This argument also misapprehends the limited nature of our review of the sufficiency of the evidence. "'Although it is the duty of the jury to acquit a defendant if it finds that circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence, it is the jury, not the appellate court which must be convinced of the defendant's guilt beyond a reasonable doubt. If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also be reasonably reconciled with a contrary finding does not warrant a reversal of the judgment.'" (*People v. Perez* (1992) 2

Cal.4th 1117, 1124, quoting *People v. Bean* (1988) 46 Cal.3d 919, 932; see *People v. Ceja* (1993) 4 Cal.4th 1134, 1139.) In the present case, the evidence supporting the guilty verdicts is substantial.

#### Restitution

As a condition of probation, the trial court ordered defendant to pay \$45,443 in restitution pursuant to Penal Code section 1202.4, subdivision (f), which provides: "In every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court. The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record."

In making a restitution award, the sentencing court must make an independent determination of the amount of restitution to be paid based on available evidence. (*People v. Hartley* (1984) 163 Cal.App.3d 126, 130.) The sentencing court has broad discretion in setting the amount of restitution, and may use ""any rational method of fixing the amount of restitution which is reasonably calculated to make the victim whole . . . ."" [Citations.]" (*People v. Tucker* (1995) 37 Cal.App.4th 1, 6.)

Defendant argues the sentencing court should have found "compelling and extraordinary reasons" for reducing his restitution to an amount below the County's total losses as a result of his actions. Those reasons, according to defendant, are the absence of personal gain to defendant, possible "double payment" to the County by reason of repayments by the individuals who received benefits, and his depressed income resulting from his dismissal from County service. None of these reasons was either compelling or extraordinary.

As a preliminary matter, we note that defendant's failure to object to the amount of restitution waived this claim on appeal. (*People v. Tillman* (2000) 22 Cal.4th 300, 302-303 [waiver doctrine applies to claims that "'compelling and extraordinary reasons'" support reduction in restitution fine].)

The claims fail on the merits as well. Regarding the lack of personal gain to defendant, defendant cites no authority to support a reduction in restitution based on this circumstance; aiders and abettors in welfare fraud schemes may be appropriately ordered to make restitution of benefits paid to third parties. (See, e.g., *People v. Crow, supra*, 6 Cal.4th at p. 956 [upholding restitution of \$31,807 imposed on defendant who assisted woman in perpetrating welfare fraud which resulted in payments to woman of \$29,336 in AFDC benefits and \$3,593 in food stamps].)

With respect to the alleged "double payments" that would occur if defendant were required to reimburse the County for sums repaid by the welfare fraud recipients, the court

explicitly ordered that defendant's restitution would be reduced by any such payments.

Regarding the financial hardship caused by defendant's dismissal from County employment, Penal Code section 1202.4, subdivision (g), specifies that "[a] defendant's inability to pay *shall not* be considered a compelling and extraordinary reason not to impose a restitution order, *nor shall* inability to pay be a consideration in determining the amount of a restitution order." (Italics added.) (*People v. Draut* (1999) 73 Cal.App.4th 577, 582 [sentencing court abused its discretion in reducing over \$1 million in restitution based on defendant's inability to pay].)

DISPOSITION

The judgment is affirmed.

\_\_\_\_\_, MORRISON, J.

We concur:

\_\_\_\_\_, SIMS, Acting P.J.

\_\_\_\_\_, HULL, J.